

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN RE APPLICATION

OF: HÖSSEL ET AL.

SERIAL No. 09/604,001

FILED: JUNE 26, 2000

FOR: USE OF CROSSLINKED CATIONIC POLYMERS IN SKIN COSMETIC
AND DERMATOLOGICAL PREPARATIONS

DOCKET No.: PF50105

CONFIRMATION No.: 2632

GROUP ART UNIT: 1615

EXAMINER: B. M. FUBARA

Honorable Commissioner
for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

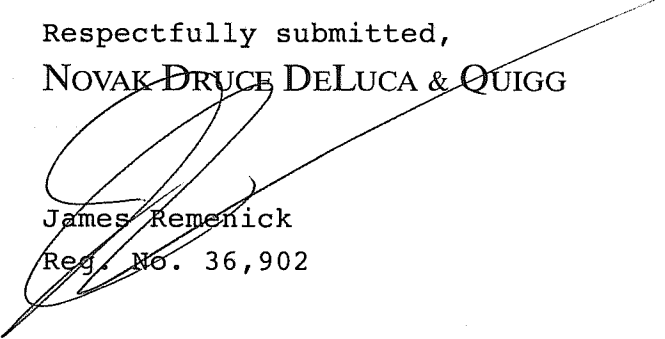
REPLY BRIEF UNDER 37 C.F.R. §41.41

Sir:

The following remarks and observations are made in reply to the Examiner's Answer dated February 08, 2007. It is respectfully submitted that appellants stand by their position taken in the main Brief on Appeal.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account No. 14.1437. Please credit any excess fees to such deposit account.

Respectfully submitted,
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R E M A R K S

It is noted that the Examiner has essentially reiterated her original position.

Additionally, regarding the question whether the subject matter of appellants' Claims 1 to 15 was unpatentable under Section 103(a) in light of the teaching of **Tropsch et al.**, i.e. issue (II), the Examiner now appears to argue that "polyvinylamine" and "vinylimidazole" which are mentioned in the reference are monomers which meet the provisions of component (e) of the copolymer referenced in appellants' claims.¹⁾ Appellants respectfully urge that the respective interpretation is clearly in error because neither one of these components meets the provisions of appellants' constituent (e) that "at least two ethylenically unsaturated, nonconjugated double bonds" be present.

"Polyvinylamine" is a polymer which is formed when the vinyl group(s) of a vinylamine (or a precursors thereof) are polymerized which means that polyvinylamine does not comprise ethylenically unsaturated, nonconjugated double bonds which are suitable for cross-linking. It should be appreciated that **Tropsch et al.** mention polyvinyl amines as representatives of "[f]urther suitable polymers for hair cosmetics."²⁾ The respective ingredients are, therefore, not monomers which are incorporated into the copolymers of **Tropsch et al.** but are polymers which may further be added to the hair cosmetics of the reference in addition to the copolymers. The Examiner's reference to "polyvinyl amine/trivinyl amine"³⁾ is not understood. **Tropsch et al.** nowhere mention trivinyl amine monomers and clearly fails to suggest that such monomers be incorporated into the copolymers delineated in col. 1, indicated line 56, to col. 2, indicated line 4.

Similarly, "vinylimidazole" does not contain "at least two ethylenically unsaturated, nonconjugated double bonds" and is therefore also outside of the realm of the constituents (e) of the copolymers referenced in appellants' claims. "Vinylimidazole" contains three double bonds. However, two of those three double bonds, i.e. the double bonds of the imidazole ring, are conjugated and form part

1) Cf. pages 5 and 6 and pages 9 and 10 of the Examiner's Answer.

2) Cf. col. 4, indicated line 490 et seq., at indicated line 45, of **US 5,869,032**; emphasis added.

3) E.g. sentence bridging pages 5 and 6 of the Examiner's Answer.

of the aromatic electron system of the imidazole ring. The respective double bonds are therefore also not "ethylenic."⁴⁾

Appellants respectfully reiterate their request that the Examiner's rejection

- of appellants' Claims 1 to 13 and 15 under 35 U.S.C. §103(a) based on the teaching of *Uhl et al.*,
- of appellants' Claims 1 to 13 and 15 under 35 U.S.C. §103(a) based on the teaching of *Tropsch et al.*, and
- of appellants' Claims 1 to 13 and 15 under the judicially created doctrine of obviousness-type double patenting based on Claims 1 to 13 of *Tropsch et al.*;

be reversed. Favorable action is solicited.

4) Cf. formula (I), col. 2, indicated lines 5 to 16, of *US 5,869,032*.